BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JOE A. GONZALES, JR. Claimant)
VS.	Posket No. 202 006
F & O ROUSTABOUTS, INC. Respondent) Docket No. 202,096
AND	{
BITUMINOUS CASUALTY CORPORATION Insurance Carrier	{

ORDER

Respondent and its insurance carrier appeal from a preliminary hearing order by Special Administrative Law Judge William F. Morrissey dated December 26, 1995.

ISSUES

Respondent and its insurance carrier request Appeals Board review of the issues regarding whether notice was timely given and whether the medical condition for which claimant seeks treatment is causally connected to the alleged work-related accident. Stated another way, this question gives rise to the issue of whether claimant's alleged accident and resulting injury arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds for purposes of preliminary hearing as follows:

The Appeals Board has jurisdiction to review these preliminary hearing issues pursuant to K.S.A. 44-534a.

Claimant has not established timely notice of accident pursuant to K.S.A. 44-520.

On April 3, 1995, the date of the alleged accident, claimant was employed as a roustabout with respondent, an oil field maintenance company. The respondent had a policy that accidents were to be reported immediately either to a supervisor or to Frank or Jackie Walker, the owners of the company. The notice policy was made known to the claimant both by virtue of its being printed in the employee handbook and posted in the company break room.

The Special Administrative Law Judge found that claimant sustained injury by accident on April 3, 1995 and that the employer had actual knowledge of the accident. The Appeals Board disagrees with the finding by the Special Administrative Law Judge that the employer had actual knowledge of the accident. Although there were several coworkers

that witnessed the incident to which claimant attributes his injury, the Appeals Board finds that none of those individuals were supervisory personnel. Furthermore, the Appeals Board finds that the claimant did not report the accident to a supervisor nor to the owners of the company within 10 days as required by K.S.A. 44-520. The first notice given to respondent of the accident was by a letter dated May 31, 1995 from claimant's counsel. Although this letter was received by respondent within 75 days of the accident, the claimant does not allege, nor does the evidence establish, just cause for claimant's failure to give notice of accident within 10 days so as to extend his time for giving notice under the statute. Therefore, the order of the Special Administrative Law Judge should be reversed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Award of Special Administrative Law Judge William F. Morrissey dated December 26, 1995 should be, and the same is hereby, reversed.

IT IS SO ORDERED.		
Dated this	day of March 1996.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	
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c: Steven L. Brooks, Liberal, KS Richard A. Boeckman, Great Bend, KS William F. Morrissey, Special Administrative Law Judge Philip S. Harness, Director